

SUMMARY STATEMENT

Davison v. DeBest Plumbing, Inc.

Docket No. 44625

In an appeal from Valley County, the Supreme Court affirmed in part, reversed in part, and remanded for further proceedings following the district court's grant of summary judgment in favor of DeBest Plumbing, Inc. (DeBest).

Scott and Anne Davison brought this lawsuit seeking to recover damages resulting from water damage caused by a leaking bathtub installed by DeBest. The bathtub was installed in the Davisons' vacation home as part of a larger remodel performed by Gould Custom Builders, Inc. After noticing the leak, the Davisons alerted Gould who then notified DeBest. Representatives of Gould and DeBest went to the home to inspect the damage and fix the leak. DeBest promised Gould that it would pay the cost of repairing the damage caused by the leak. Gould then repaired the damage. After DeBest failed to pay for Gould for the repairs, the Davisons brought this suit seeking to enforce the contract between Gould and DeBest and also seeking damages for negligence.

The district court dismissed the contract claims, finding that the Davisons were not in privity with DeBest. The district court also dismissed the negligence claims, finding that the Davisons had failed to comply with the written notice requirement of the Notice and Opportunity to Repair Act (NORA).

The Davisons appealed, arguing that NORA did not apply to their claims and, alternatively, that they had substantially complied with its requirements. The Davisons also argued that the district court erred by holding that NORA did not abrogate the common-law requirement of privity for contract claims.

The Supreme Court refused to address the Davisons' claim that NORA did not apply because the Davisons had asked the district court to hold that NORA applied to their claims. The Supreme Court affirmed the district court's holding that NORA does not abrogate the common-law requirement of privity for contract claims, but reversed the district court's holding that the negligence claim must be dismissed because the Davisons had failed to give DeBest written notice of the construction defect. The Court held that because DeBest had been given actual notice of the construction defect, had inspected the defect, and offered to pay for the damage, that the Davisons had substantially complied with the requirements of NORA.